



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 7

[Docket No. USCG-2011-0925]

Special Load Line Exemption for the Gulf of Mexico: Petition for rulemaking.

AGENCY: Coast Guard, DHS.

ACTION: Notice of decision

SUMMARY: On October 1, 2012, the Coast Guard published a Notice of Availability and Request for Public Comment regarding a petition for a rulemaking action. The petition requested that the Coast Guard establish a load line-exempted route in the Gulf of Mexico, along the western coast of Florida. Upon review of the comments as well as analysis of safety considerations and other factors described in the discussion section, the Coast Guard has decided not to proceed with the requested rulemaking. The public comments, and the Coast Guard's reasoning for its decision, are discussed in this notice.

DATES: This decision was issued on August 15, 2014

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, contact Mr. Thomas Jordan, Naval Architecture Division (CG-ENG-2), U.S. Coast Guard Headquarters, at telephone 202-372-

1370, or by e-mail at thomas.d.jordan@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION

REGULATORY HISTORY AND BACKGROUND:

The purpose of a load line (LL) assignment is to ensure a vessel is seaworthy for operation outside the Boundary Line. Load lines are required by 46 USC 5101-5116 and 46 CFR Subchapter E. In general, the LL assignment requires that vessels are robustly constructed, fitted with watertight and weathertight closures, and are inspected annually to ensure that they are being maintained in a seaworthy condition. Because non-LL river barges are not constructed to those standards, nor subject to the same periodic inspection, they are not normally allowed to operate outside the Boundary Line. However, certain non-LL river barges might be allowed on carefully-evaluated routes, under restricted conditions.

Along the U.S. Gulf coast there is a 12-mile-wide nearshore marine corridor, inside of which non-LL vessels can operate (and outside of which commercial vessels 79 feet or longer must have a load line). However, this marine corridor is constricted by an expanse of shallow water off the western coast of Florida. To navigate around that shallow zone requires most commercial

vessels to move more than 12 miles offshore (i.e. outside the Boundary Line) for a 32-mile stretch between Crystal River and Tarpon Springs. This excursion outside the Boundary Line precludes fully-loaded non-LL river barges from making that passage (although partially-loaded or empty river barges could make the passage inside the Boundary Line). Therefore, cargoes destined for the Tampa Bay region are transported on LL vessels (which can transit outside the Boundary Line), or by overland modes (truck or rail).

On June 29, 2011, Parker Towing Company, Inc., a towboat and barge operator on the U.S. Gulf Coast, sent the Coast Guard a petition letter. The petition requested that the Coast Guard establish a load line-exempted route along the western Florida coast between Crystal River and Tarpon Springs. Commercial vessels 79 feet or longer are normally required to have a load line to operate in those waters; the exemption would allow non-load line river barges to operate on the route under restricted weather and loading conditions.

The requested exemption would be a route approximately 32 nautical miles long, 12 to 15 nautical miles offshore. The petition suggests that non-load line (non-LL) river barges could operate on this route under favorable weather conditions and other loading restrictions. This would allow them to directly transport dry, non-hazardous cargoes from upriver terminals (in

Alabama, Louisiana, and Mississippi) to the Tampa Bay ports and terminals.

The Coast Guard opened docket USCG-2011-0925 and published a Notice of Availability and Request for Public Comment (77 FR 59881, October 1, 2012) with a 90-day comment period. The comment period closed on December 31, 2012; however, several comments were submitted after the closing date. The Coast Guard has considered all comments submitted up to March 21, 2014.

DISCUSSION OF COMMENTS:

In response to the notice, eleven commenters submitted 38 comments to the docket. The commenters included local manufacturers, towboat and barge operators, mariner association and seafarer unions, and port operators; their comments can be viewed on-line at www.regulations.gov (enter "USCG-2011-0925" in the search box).

Collectively, the comments fell into five basic categories:

In favor of the petition: Supportive commenters included manufacturers located on or near upriver terminals. Although river barges can presently serve some of those companies, their products cannot be shipped by river barges to Tampa Bay. Establishing the exempted route would allow them to use river barges (rather than overland modes, or other maritime transportation options). The Tampa Port Authority and Port

Manatee (located on Tampa Bay) also favored the petition as a means to expand cargo movements through their ports.

Opposed for reasons of operational safety: Two commenters are towboat and barge companies who operate barges with load lines (LL barges) on the Gulf. On the basis of their operational familiarity with the Gulf waters, they raised concerns regarding the exposed route, the volatility of Gulf weather and sea conditions, and lack of ports-of-refuge where a tow could find shelter. The commenters also pointed out that LL vessels are periodically inspected to verify that they are maintained in a seaworthy condition, whereas non-LL vessels are not subject to any such inspections, and consequently their seaworthiness is not ensured. For these reasons, the commenters stated that the exempted route would put both the non-LL river barges—and their cargoes—at risk. Another commenter (a mariner association) raised these concerns, too.

Opposed for reasons of competitive disadvantage: The LL barge operators pointed out the higher costs of LL barges versus non-LL barges, and expressed concerns that they could find themselves unfairly competing against lower-cost non-LL operators on load line routes. As one commenter stated: "Companies which invest such substantial sums, not just to meet the requirements of law and regulation, but to ensure that they safely and responsibly serve the requirements of shippers in

that market, should not have to compete against unsafe operations facilitated by a waiver of the rules."

Opposed for reasons of mariner safety: Several commenters expressed concerns about mariners working on a non-LL barge in offshore waters (even if boarding only temporarily, to adjust towlines for example). One commenter asked several detailed questions about the type of barge and cargo contemplated, and the specifics of the route planned.

Administrative comments: One commenter inquired about a May 2011 letter from the Coast Guard referenced in the petitioner's letter. We have posted the letter in the docket. The commenter also asks about the status of MARAD docket number 2010-0035 regarding America's Marine Highways, but we have no relevant information about that Department of Transportation docket.

DISCUSSION OF DECISION:

The overall purpose of a load line assignment, and the waters in which commercial vessels must comply, are described in the Notice of Availability (79 FR 59881, October 1, 2012) and in 46 CFR subchapter E. When assigning a load line, the Coast Guard is required by 46 USC 5104(b) to consider the service, type and character of the vessel, the geographic area in which the vessel will operate, and applicable international agreements to which the United States is a party. The Coast Guard may exempt vessels from load line requirements for good cause (see

46 U.S.C. 5108 and 46 CFR 42.03-30) and vessel owners and operators may apply for special service load lines (46 CFR part 44). The Coast Guard has existing regulations at 46 CFR part 45, subpart E, exempting certain unmanned, river-service, dry-cargo barges from Great Lakes load line requirements in limited circumstances.

The Coast Guard's analysis and public comments highlighted the fact that there are barges, which meet the load line standards, that are already engaged in commercial service along this route today. Barges which meet load line standards include design features to prevent down-flooding, and to prevent progressive flooding and sinking through subdivision of the vessel's interior. If the Coast Guard were to approve this petition, it would allow vessels of a type and character which do not meet the same safety standards for design, construction, operation and inspection to engage in trade along this route, thereby reducing the established minimum safe construction and operating standards for vessels traveling along this offshore route.

Although the petitioner argues that operating a few miles beyond the limits established in the regulations should be considered as safe as operating within the limits, the maritime regulations are based on the existence of well documented thresholds beyond which higher standards apply. To consider

this request under that logic would be to undermine a key foundation in the Coast Guard's approach to maritime regulation. Moreover, the area's geography contains a large expanse of shallow water along the proposed route, which would preclude a fully laden barge from seeking a close port of refuge in an emergency. Depending on where the barge was in its journey, the nearest accessible port of refuge may be as far as 31 miles away.

We also considered evaluating this request based on geographically limiting the route from a specific upriver port or terminal to a specific port or destination in Tampa. In a prior petition for an exemption on the Great Lakes, this was the approach that was taken to severely limit the scope of application and ensure an adequate level of safety along a limited route within the Great Lakes. Even if the Coast Guard restricted the exemption to only those vessels that originated at certain up-river terminals, as was done on the Great Lakes, this decision would allow non-LL river barges to operate on a LL route, which would create a multi-tiered regulatory regime, based on specific routes between designated upriver terminals and the Tampa Bay ports. Under this regime, a tug that traveled from a designated upriver terminal to Tampa Bay would be able to use a non-LL river barge, but a tug that traveled along the same waters between other coastal ports and Tampa Bay would have to

use a LL barge. The Coast Guard believes such discrepancies do not serve the interests of maritime safety or maritime commerce generally, because they foster confusion and opportunities for abuse, and can remove or weaken incentives for safety and efficiency.

Moreover, a multi-tiered regulatory regime is unenforceable as a practical matter. Load line and non-LL barges can legitimately be found in the same port and there is nothing that inherently identifies a non-LL barge participating in any such multi-tiered program. Therefore, if the requested exempted route is established, there is nothing that effectively prevents non-LL barges from loading cargoes at any Gulf port (not just upriver terminals) for delivery to Tampa, or for return cargoes (loaded at Tampa) to be delivered to any Gulf port. In order to prevent such transits, the Coast Guard would need to individually inspect the cargo manifest and vessel logs for all non-LL barges, causing delay to all vessels including those that may be on permissible voyages inside the Boundary Line. The delay to commercial shipping and the diversion of Coast Guard resources to this effort are not practicable or in the interest of maritime commerce.

With minor exceptions, the U.S. requirements for domestic load line are the same as the requirements for an international load line and are consistent with the International Load Line

Convention. As a party to the convention, the U.S. is obliged to promote standardization of load line regulations. Our decision to deny the petition is consistent with this obligation.

For all the reasons above, the Coast Guard denies the petition and will not undertake the rulemaking requested.

This notice is issued under authority of 5 U.S.C. 553(e), 555(e) and 46 U.S.C. 5108.

Dated: August 15, 2014

J. G. LANTZ,
Director of Commercial Regulations and Standards,
U.S. Coast Guard.

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